IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 231 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAMAR KAMLESHBHAI KANTIBHAI
Versus
STATE OF GUJARAT

Appearance:
MR AN PATEL for Appellant
MR HM PRACHHAK, APP for Respondent

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 08/04/2004

ORAL JUDGEMENT (Per : HON'BLE MR.JUSTICE J.R.VORA)

1. This Appeal is preferred by accused of Sessions Case No. 137 of 1996 of the Court of Sessions at Mehsana Camp at Patan against the judgment and order delivered by Additional Sessions Judge, Mehsana, Camp at Patan on 15.1.1997 convicting the present appellant for the offence proved against him under Section 302 of the IPC and sentencing him for life imprisonment and imposing fine of Rs. 200/- in default to undergo RI for one month.

2. As per the prosecution case, incident in question occurred on 7.12.1994 at Indiranagar, Chanasma, District Mehsana (as it then was) at about 3.00 p.m. in the house of deceased Jitendra @ Dineshbhai Chelabhai Chamar wherein it is alleged that appellant - accused Kamleshbhai Kantibhai went to the house of the deceased and inflicted stab wounds. Complainant Laxmiben Jitendrabhai, PW-3 wife of deceased on the day of incident at about 12.00 p.m. was fetching water on public tap. The accused came there and started giving abuses but without telling anything PW-3 Laxmiben returned to her house and informed her husband deceased Jitendrabhai Chelabhai. Immediately appellant - accused came to the house of the deceased and started giving abuses to deceased Jitendrabhai, but on persuasion by the deceased, the accused - appellant went away from the house of the deceased at that time. Thereafter at about 3.00 p.m. when PW-3 was busy with her household work and deceased was lying down on a cot in the house, again accused appellant came to the house of the deceased and started giving abuses. Deceased as well as PW-3 requested accused appellant not to utter abuses. Accused appellant enraged and took out a knife from his pant and inflicted two blows of knife on abdomen of deceased Jitendrabhai who was lying on cot. Deceased was smeared with blood and became unconscious. On shouting by PW-3 Laxmiben, accused - appellant ran away from the house of the deceased and neighbours Savitaben Mohanbhai, Girishbhai Kishorebhai and Rameshbhai Mafabhai came to the house of the deceased. Girishbhai Kishorebhai and Rameshbhai Mafabhai took deceased first to the Government Hospital at Chanasma in rickshaw, and thereafter he was shifted to Patan Hospital. During treatment, Jitendrabhai Chelabhai Chamar died at Patan Hospital at about 14.35 hours. Dr. Swami of Patan Civil Hospital informed Patan City Police Station, which was recorded by PW-11 Sirajkhan Hussainkhan, who was PSO at the relevant time. He received vardi that the deceased Jitendrabhai was brought Patan Hospital who received injury in scuffle and was found dead. Thereafter it appears that PW-15 PSI

Brahambhatt of Police Station, Patan, was informed. He visited the Government Hospital, Patan, and prepared the inquest panchnama and informed Chanasma Police Station, where the crime was registered as Crime Register No. I-223/94 and investigation in the matter was started by PW-14 Raysinghbhai Khant after recording of complaint of PW-3 Laxmiben, wife of the deceased. In pursuance of the investigation, a charge sheet was filed against the appellant - accused for the offences punishable under Sections 504, 302, 201 of the IPC and for the offence punishable under Section 135 of the Bombay Police Act. The complaint came to be registered at about 22.30 hours on 7th of December, 1994.

3. On case being committed to the Court of Sessions, learned Additional Sessions Judge, Mehsana, Camp at Patan vide Exh. 3 framed charges for the above said offences against the appellant - accused on 5.10.1996, to which the accused - appellant pleaded not guilty and, therefore, the prosecution examined as many as 16 witnesses and produced on record documentary evidence.

4. Prosecution examined following witnesses.

PW-1 Exh. 6 Dr. Dashratbharti Pashabharti, who conducted the postmortem of the dead body of deceased Jitendrabhai on 8.12.1994 at 7.00 a.m. Accordingly, he produced Postmortem Note at Exh.7. PW-1 Dr. Dashratbharti deposed that the deceased had the following two injuries.

1. Stab wound over the left 7th intercostal space 3.5 cms away from midline. Size 3 cms x 1 cm oblique in direction, open into thoracic cavity.

2. Stab wound over the left side of the abdomen 5 cms to midline and 6.5 cms upward and laterally from umbilical. Size 2 cms x 1 cm. Open into abdominal cavity. Traverse in direction.

All the injuries were antemortem. There were internal injuries corresponding to external injuries and the cause of death was due to haemorrhage shock and due to injury over vital organs i.e. liver and left lung. He also stated that both the injuries were sufficient in ordinary course of nature to cause death. In cross-examination, the possibility was raised by the defence that the injuries which the deceased had, would not have been inflicted when deceased was in lying position, but the

Doctor has denied this possibility.

PW-2 Dr. Mansingh Laljibhai Chaudhary Exh.8 is examined and deposed that on 7.12.1994 complainant Laxmiben Jitendra had received injuries of knife and she was brought to Chanasma Primary Health Centre on 12.12.1994. She had a small wound on left ring finger. This is regarding the injuries caused to the complainant and is not material in deciding the Appeal.

PW-3 Exh. 10 Laxmiben Jitendrabhai is examined as the main eye witness of the case. She supported in all respects the complaint filed by her. She referred earlier two incidents preceded to the main incident and stated that at about 3.00 p.m. the accused came and started giving abuses. When he was prevented by deceased and herself, he took out a knife from the pant and inflicted two injuries on her husband deceased Jitendrabhai who was lying on the cot. She stated that the knife was the same knife which was produced in the case as muddamal article No.8. She stated that at that time Savitaben Mohanbhai, Girishbhai Kishorebhai, and Rameshbhai Mafabhai had came to the incident. She also stated that her husband was taken to first Chanasma Hospital and thereafter to the Patan Hospital where he was declared dead. She has been cross-examined in detail but neither any contradiction with her complaint could be brought by the defence in her cross-examination nor any allegation against this witness could be proved by appellant accused. It has been alleged against her that her sister-in-law i.e. Jethani Manguben was serving as PSI and that the complaint was given as per the direction of Manguben but this fact is denied. She has stated that at the time of incident, her daughter Komal aged 7 to 8 years was present and she was taking her meal. One more child was in cradle. She also stated that the accused appellant was distant family brother of the deceased. She denied that there was dispute between them about family property. She stated that the accused was residing in the same mohalla and she denied that the incident did not occur as stated her complaint produced at Exh. 11.

PW-4 Komalben Jitendra, daughter of the deceased is examined at Exh. 12. She was aged 8 years on 20.11.1996 when her deposition was recorded. She in her very brief examination-in-cheif stated that when her father was sleeping on cot and when her mother was standing near the cot, the accused appellant came to her house and started inflicting blows of knife on abdomen and on chest of her father. She admitted in her

cross-examination that at the time of deposition she was staying with her Aunt Manguben and Manguben told her to give the deposition and she also told what deposition was to be given.

PW-5 Exh. 13 Girishbhai Jugalbhai is a panch of inquest panchnama Exh. 14. He has supported the inquest panchnama.

PW-6 Exh. 15 Abheysinh Hathisinh is the person who shifted Jitendra to Government Hospital at Chanasma where according to him Doctor was not present and therefore he was taken to Highway, and from Highway, in one jeep Jitendra was shifted to Patan.

PW-7 Exh. 16 Vishnubhai Manilal the person who shifted Jitendra from Highway to Patan Hospital in his jeep car and he has stated that while he was standing with his jeep on the Highway, in rickshaw Jitendra was brought to him and in his jeep he was taken to Patan Hospital.

PW-8 Bhimsinh Hiraji Exh.17 is panch of panchnama Exh.18 of the scene of offence, but this witness has not supported the prosecution case and stated that on the said panchnama the Police has obtained his signature near his house.

PW-9 Exh. 19 Kaluji Jivanji is second panch of panchnama Exh.18 of the scene of offence but has turned hostile and not supported the prosecution case.

PW-10 Exh. 20 Khemabhai Karsanbhai Solanki is panch of panchnama at Exh. 21 whereby the Police seized the clothes of deceased Jitendra Chelabhai and this witness has supported the panchnama at Exh. 21.

PW-11 Exh.22 Sirajkhan Hussainkhan is examined to prove a fact that he was at the relevant time serving as PSO of Patan City Police Station, and at about 14.35 hours he received Vardi from Dr.Swami of Patan Civil Hospital to the effect that Dinesh @ Jitendra was brought to the Hospital and was found dead who had received injuries in a scuffle. He entered Vardi in Police Station Diary and entrusted the inquiry to PSI Vasudev Sitaram Brahmbhatt.

PW-12 Exh. 27 Rameshbhai Mafabhai stated that at about 3.00 p.m. while he was returning to his house, there was a crowd in Indiranagar where he heard that accused - appellant inflicted knife blows on deceased

Jitendra. He accompanied with the deceased in rickshaw to Chanasma Government Hospital and from there he shifted the deceased Jitendra to Patan Hospital.

PW-13 Exh. 28 Mahendra Hiralal Purohit is panch of panchnama Exh. 28 which is an arrest panchnama of the accused drawn on 8th of December, 1994 from 16.00 hours to 16.30 hours. The witness PW-13 Mahendra Hiralal stated that he was told by the Police at Police Station, Chanasma, where accused was present, that the accused wanted to say something to him. Therefore, he inquired from the accused - appellant and accused - appellant stated that he wanted to recover one knife. A preliminary panchnama was prepared there. He signed that panchnama. Thereafter he, second panch, police and accused went to highway service station near one electric pole and from there the accused - appellant recovered a knife mudammal article No.8, and there the panchnama was drawn, which is produced at Exh.30. In cross-examination he has been alleged that he was running a hotel and therefore to oblige the Police he became panch of the said two panchnamas. On the contrary, in cross-examination, he confirmed that as per the say of the accused - appellant Police Driver draw the jeep and from near the electric pole from the trees from about 2.2 feet ditch the knife was recovered by the appellant accused.

PW-14 Exh. 31 Raysangbhai Viraji Khant is the Investigating Officer. According to him, on 7.12.1994 investigation was handed over to him by PSO Chanasma. He recorded the complaint of the complainant. He confirmed and corroborated the complaint. He undertook the investigation.

PW-15 Exh. 33 Vasudev Sitaram Brahmbhatt was PSI of Patan City Police Station at the relevant time. PW-11 Sirajkhan Hussainkhan of Patan City Police Station entrusted him the inquiry of Entry No.14/1994. Therefore, he went to the Hospital and draw inquest panchnama. He confirmed an corroborated the inquest panchnama.

Last witness PW-16 Dilipbhai Ranchhodbhai Investigating Officer is examined at Exh. 36 who is second Investigating Officer who was entrusted with the investigation from 12th of December, 1994. He produced on record Exh. 37 muddamal forwarding letter to FSL and the reports of Forensic Science Laboratory from Exhibits 39, 40 and 42.

5. from re-appreciating the evidence it becomes clear that the death of Jitendra @ Chelabhai was a culpable homicide and on account of injuries which he received in abdomen by knife.

6. To prove the case against the appellant - accused about culpable homicide amounting to murder, main witness is PW-3 Laxmiben Exh.10. Against her it has been argued by learned Advocate Mr. A.N. Patel for the appellant that she refers to scuffle having taken place between her and the accused and between her husband and accused. She is not, according to learned advocate for the appellant, corroborated by the independent witnesses named in the First Information Report. The clothes of Laxmiben were not found blood stains though she had tried to rescue her husband. She failed to establish motive of the crime and the cause of the dispute and, therefore, according to learned advocate for the appellant this star witness should not be believed. As against that learned APP Mr. Prachhak stated that there is no law that in each case independent witnesses should be examined by the prosecution and that the evidence of interested witnesses should not be believed.

7. We have gone through carefully the deposition of Laxmiben and the detailed cross conducted by the defence. Whatever stated by PW-3 Laxmiben Exh. 10 appears to be simple and natural. It must be borne in mind that the incident has occurred in the house of the deceased. There was no reason for the appellant accused to enter the house of the deceased. This circumstance corroborates the say of PW-3 Laxmiben. No wife shall involve any wrong accused in the murder of her husband. Nothing is coming out from cross-examination of the defence to discard the evidence of PW-3 Laxmiben as to why Laxmiben was deposing against the accused. Not only that but her evidence is corroborated by the complaint and the evidence of PW-1 Dr. Dashrathbharti Pashabharti. PW-4 Komalben, daughter of the deceased was minor at the relevant time but this witness Komalben in all respects has corroborated the evidence of PW-3 Laxmiben. True it is that she stated in cross-examination that it was her aunt who told her to depose and also told her what is to be deposed, but from only that it cannot be said that minor witness Komalben Exh. 12 was a tutored witness. Her presence in the house was natural. PW-3 stated that her eldest daughter Dipaben was at school and Komal was in the house. There is no reason for this minor to state against the appellant accused. The possibility of tutoring this witness must be ruled out in view of reliable testimony of PW-3 Laxmiben.

8. The case of the prosecution and the case of the PW-3 and PW-4 Komalben is more corroborated by panchnama of discovery of knife at the instance of the accused, for which at Exh.28 Panch Mahendra Hiralal has been examined and in all respects this witness has supported the panchnama Exh.29 and discovery panchnama Exh.30. Discovery of knife by which appellant inflicted injuries, at the instance of the accused, is proved by the evidence of this witness and the evidence of Investigating Officer, PSI Raysangbhai Viraji Khant PW-14. Nothing is brought about by the defence to disbelieve either the evidence of Mahendra Hiralal PW-13 Exh. 28 or the evidence of PW-14 PSI Raysangbhai Viraji Khant to disbelieve the evidence of discovery of knife at the instance of the accused. Only because Mahendra Hiralal is panch of two panchnamas, would not discard his evidence, as argued by learned Advocate for the appellant or only because he is running hotel, his evidence cannot be branded as unreliable.

9. Thus, through the evidence of two eye witnesses and through the discovery evidence, beyond reasonable doubt, the case of the prosecution is proved against the accused for the offence under Section 302 of the Indian Penal Code. We are unable to accept the argument of learned Advocate for the appellant that since the independent witnesses have not been examined, the evidence of two eye witnesses should not be believed. We are also unable to accept the argument of the learned Advocate for the appellant that the case falls within the Exception of Section 300 because there was a scuffle between PW-3 and the accused, on account of which, PW-3 also received injuries on top of the ring finger. Though it is also argued by learned Advocate for the appellant that about the injuries to PW-3 neither she has stated anything in her deposition nor the prosecution has explained anything about this. Having considered these arguments and carefully scanning the evidence, it becomes clear that the injury received by PW-3 Laxmiben as stated by PW-2 Dr.Mansingh Laljibhai Chaudhary has no implication at all on prosecution case. It is nowhere the case of the prosecution that PW-3 Laxmiben received injuries in the incident in question and secondly the injuries received by the witness and not explained by the prosecution would not in the circumstance of the case affect the core of the prosecution case. It is not the allegation of the defence that PW-3 received injuries in this scuffle took place between the accused and deceased Jitendra. Neither this is the case of the prosecution

and, therefore, we are unable to accept this contention of learned Advocate for the appellant. In all cases it is not necessary to examine independent witnesses by the prosecution. It is clear that the incident has taken place in the house of the deceased where independent witnesses would not be present. Natural witnesses present at the time of incident i.e. PW-3 and PW-4 Komalben minor daughter of the deceased are examined and they are found credible and reliable. They are corroborated by complaint, discovery panchnama and the evidence of PW-1 Dr.Dashrathbharti Pashabharti. The case is proved beyond doubt against the accused appellant from this evidence. In these circumstances, the examination of independent witnesses would be out of question. Learned Trail Judge acquitted the accused for the charges punishable under Section 504, 201 of the IPC and Section 135 of the Bombay Police Act. So far as the conviction and sentence awarded by the learned Trail Judge to the accused appellant for the offence proved against him under Section 302 of the IPC, in view of the above discussion, we are unable to interfere with the findings of the learned Trail Judge. In this view of the matter, the Appeal is required to be dismissed.

10. In the result, the Appeal fails and stands dismissed.

(B.J. Shethna, J.)

(J.R. Vora, J.)

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